

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

THE TRAVELERS INDEMNITY
COMPANY OF CONNECTICUT, a
Connecticut corporation; and
TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA, a Connecticut
corporation,

Plaintiffs,

v.

BUZZ OATES CONSTRUCTION, INC., a
California corporation; ELITE
READY-MIX, LLC, a California
limited liability company;
FINANCIAL PACIFIC INSURANCE
COMPANY, a California corporation;
RON NURSS, INC dba BLUELINE
CONSTRUCTION, a California
Corporation and DOES 1 through 10,
inclusive,

Defendants.

No. 2:24-cv-2184 WBS AC

ORDER RE: MOTION TO DISMISS
BUZZ OATES' COUNTERCLAIMS

-----oo0oo-----

Plaintiffs Travelers Indemnity Company of Connecticut
and Travelers Property Casualty Company of America (collectively,
"plaintiffs" or "Travelers") brought this action seeking
declaratory relief, equitable contribution, and equitable

1 indemnity from Buzz Oates Construction, Inc. ("Buzz Oates") and
2 other defendants. (Docket No. 15.) Those claims implicate an
3 underlying state court action concerning an alleged construction
4 defect. See PW Fund B Dev., LLC v. Buzz Oates Constr., Inc., No.
5 34-2022-00322887 (Cal. Super. July 5, 2022).

6 On November 20, 2024, the court denied Buzz Oates'
7 motion to stay, with the caveat that the court would "delay
8 deciding any and all issues relating to insurance coverage in
9 this action until after final resolution of the underlying state
10 court action." (Docket No. 33 at 3.) On November 27, 2024, Buzz
11 Oates answered the operative complaint and asserted three
12 counterclaims against Travelers for breach of contract, breach of
13 the implied covenant of good faith and fair dealing, and
14 equitable contribution. (Docket No. 35 at 14-22.) On January 8,
15 2025, Travelers moved to dismiss Buzz Oates' counterclaims.
16 (Docket No. 47.)

17 Buzz Oates' first counterclaim alleges that "Travelers
18 breached their contractual obligations to Buzz Oates . . . by
19 failing to defend Buzz Oates against the underlying [state court]
20 action" and "failing to reimburse defense expenses Buzz Oates
21 incurred on its own behalf." (Docket No. 35 at 19
22 (capitalization altered).)

23 The second counterclaim states that "Travelers breached
24 their duty of good faith and fair dealing owed to Buzz Oates by
25 intentionally engaging in a course of conduct calculated to
26 deprive Buzz Oates of its right to receive the benefits due under
27 the Travelers policies." (Docket No. 35 at 19-21 (cleaned up).)

28 The third counterclaim involves co-defendant Zurich

American Insurance Co. ("Zurich"), which also insures Buzz Oates. (Docket No. 35 at 13-14.) Zurich defended Buzz Oates in the underlying state court action. (Docket No. 35 at 18-19.) Buzz Oates alleges that if Zurich and Travelers "share the same level of liability," then Travelers owes Buzz Oates some of what Zurich spent for Buzz Oates' defense in the underlying state court action. (Docket No. 35 at 21-22.)

Because Buzz Oates' counterclaims concern insurance coverage and facts at issue in the underlying state court action, the court would have to address those questions to resolve Travelers' motion to dismiss. To do so would be inconsistent with the court's expressed intention to withhold deciding any issues relating to insurance coverage until after final resolution of the state court action. See Cornejo v. Minglana, No. 23-cv-05383, 2024 WL 3345830, at *1 (N.D. Cal. July 9, 2024); Cota v. Santa Ana Police Dep't, No. 21-cv-01774, 2023 WL 11952801, at *2 (C.D. Cal. Nov. 7, 2023).

IT IS THEREFORE ORDERED that Travelers' motion to dismiss Buzz Oates' counterclaims (Docket No. 47) be, and the same hereby is, DENIED WITHOUT PREJUDICE to refiling upon conclusion of the state court action.

Dated: February 19, 2025



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE